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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,635	09/30/2005	Gloria Silva	09163000.110000US	5452
23562 7590 07/15/2009 BAKER & MCKENZIE LLP PATENT DEPARTMENT 2001 ROSS AVENUE SUITE 2300 DALLAS, TX 75201				
EXAMINER				
PRYOR, ALTON NATHANIEL				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
07/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/551,635

Applicant(s)

SILVA, GLORIA

Examiner

ALTON N. PRYOR

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616

The paper is not entered because the first page states, "RESPONSE TO NON-FINAL OFFICE ACTION" instead of response to final office action. Please correct or address.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues that the references do not make the invention obvious because the references do not teach the selection and cutting of the flowers, at least three dehydration steps and an evaporation step. Applicant argues that DeWinter-Scaitleur process may involve the cutting of the flowers after the dehydration and infiltration steps.

The Examiner argues that the artisan would have to eventually select the plants and then cut them in order to practice the instant invention. The Examiner reiterates that for the instant process it is inherent that an artisan would have to select and cut flowers in order to practice the process. Therefore, DeWinter-Scaitleur process for preserving natural flowers would inherently involve identifying/selecting a flower and then cutting the selected flower prior to preserving the flower. Whether selection/cutting is done before or after the dehydration step is insignificant absent a showing of the criticality of the particular sequence of process steps

Applicant argues that with respect to the instant three dehydration steps in the instant process, DeWinter-Scaitleur teaches away from using more than two dehydration steps. Applicant states that DeWinter-Scaitleur teaches actually only one dehydration step rather than two dehydration steps recited in Applicants argument or the three dehydration steps required in Applicant's invention. Applicant further argues that DeWinter-Scaitleur discloses the filling of a receptacle with solvent and that there is no removal of the solvents for completing various dehydration steps. On the other hand, instant invention involves the filling of a reactor three times with the solvent and the removal of the solvent three times. DeWinter-Scaitleur does not teach the use of molecular sieves.

The Examiner argues that Applicant does not show the significance of the instant three dehydration steps as opposed to the one dehydration step present in DeWinter-Scaitleur according to the Applicant. Why conduct three dehydration steps if one works.? The Examiner maintains that DeWinter-Scaitleur teaches two dehydration steps one at column 2 lines 7-12 and the second at column 3 lines 21-29. With respect to the use of molecular sieves in the instant process, the instant process employs comprising language which is open to the inclusion of molecular sieves.

Applicant argues that the Examiner has not directed Applicant to where in DeWinter-Scaitleur or Carstairs is evaporation disclosed. The Examiner refers Applicant to Carstairs column 5 lines 30-41.

Applicant argues that there is no motivation to combine Carstairs with DeWinter-Scaitleur since Carstairs does not teach a dehydration step. The Examiner argues that Carstairs at column 5 lines 30-41 evaporation is taught which can be considered a dehydration step. The Examiner argues that there exist ample motivation to combine the two record of record in the rejection. Note DeWinter-Scaitleur does not teach the dehydration step comprising alcohol (column 3 lines 1-54). However, Carstairs et al. teaches a process for preserving cut flowers using alcohol. It would have been obvious to one having ordinary skill in the art to modify the invention of DeWinter-Scaitleur to include alcohol taught by Carstairs. One would have been motivated to do this for dehydration purposes.